

BEFORE THE
U.S. HOUSE COMMITTEE ON NATURAL RESOURCES

SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

OVERSIGHT HEARING ON
“FEDERAL IMPLEMENTATION OF THE COASTAL ZONE MANAGEMENT ACT”

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Good morning Chairman Lamborn, Ranking Member Lowenthal, and Members of the Subcommittee. My name is William Mohl and I am the President of Entergy Wholesale Commodities, 440 Hamilton Avenue, White Plains, New York. I appreciate the opportunity to discuss our experience with the implementation of the Coastal Zone Management Act (“CZMA”). From our perspective, as an owner of nuclear facilities that are (1) coastal-dependent (due to cooling water needs), (2) energy producing, and (3) located in previously-developed areas (three of the coastal use priorities identified by Congress in passing the CZMA), the law was designed both to protect coastal areas and to ensure that coastal areas are used in an appropriate way for energy production and other productive uses of coastal resources. The CZMA was not intended simply to preserve coastal areas in an undeveloped fashion (although that is sometimes appropriate in specific cases), but rather to create a national policy “to preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation’s coastal zone. . . .” 16 U.S.C. § 1452(1). That national policy is to be implemented with “priority consideration being given to coastal-dependent uses and orderly processes for siting major facilities related to national defense, energy, fisheries development, recreation, ports and transportation. . . .” especially in areas “where such development already exists.” 16 U.S.C. § 1452(2)(D). As discussed below, we are here today to bring to the Committee’s attention the potential for abuse of the states’ role in federal licensing and permitting created by the CZMA. A current example of this abuse can be seen in New York State’s attempts to use the federal CZMA to block the issuance by the Nuclear Regulatory Commission (“NRC”) of renewed operating licenses for the Indian Point nuclear power facility, a critically important piece of the regional energy infrastructure upon which millions of New York residents, businesses, and local governments depend.

BACKGROUND

Entergy is one of the largest nuclear operators in the United States. It owns and operates ten nuclear power units in New York, Massachusetts, Michigan, Arkansas, Louisiana, and Mississippi.¹ Entergy also provides management support services for an eleventh unit owned by the Nebraska Public Power District. Entergy has approximately 13,000 employees, owns and operates approximately 30,000 megawatts of electrical generating capacity (including approximately 10,000 megawatts of nuclear

¹ Until December 2014, Entergy also operated the Vermont Yankee Nuclear Power Station. That plant was retired as a result of challenging economic conditions. It is in the process of being safely decommissioned.

power), and delivers electricity as a retail utility provider to approximately 2.8 million customers in the southeast U.S. Entergy has earned local, national, and international recognition for its leadership on a wide range of issues, including those related to environmental policy and corporate governance. For example, in 2014, Entergy was named to the Dow Jones Sustainability World and North America Indices, one of fourteen electric utility companies worldwide designated a sustainability leader on the World Index. This recognition marked the thirteenth consecutive year that the Dow Jones Sustainability Index included Entergy on either its World or North America index, or both. Entergy's inclusion on the Dow Jones Sustainability Indices reflects excellence across all sustainability dimensions – economic, environmental and social. Also in 2014, the Electric Power Research Institute awarded Entergy an Environment Sector Technology Transfer Award for its participation on a team focused on determining how changes in technology, fuels, and policy could impact future energy supply and demand, environmental regulations and generation resources.

I am responsible for Entergy's non-utility wholesale business, which includes the following merchant nuclear plants: Indian Point Units 2 and 3 and James A. FitzPatrick in New York, Palisades in Michigan, and Pilgrim in Massachusetts. We also have other generation facilities, but given the scope of today's hearing, my comments will focus on our nuclear facilities in the State of New York.

INDIAN POINT

The Indian Point Energy Center (generally referred to as "Indian Point" or "IPEC") is a two-unit nuclear power station located in Buchanan, New York. Units 2 and 3 are Westinghouse pressurized water reactors originally licensed in 1973 and 1975, respectively (the site also includes Unit 1, a small reactor that has not operated since the early 1970s). The combined output of Indian Point Units 2 and 3 is approximately 2,070 MWs, enough to power more than two million homes. As part of electric deregulation in New York, Entergy purchased Indian Point Unit 3 and the James A. FitzPatrick facility in Oswego, New York from the New York Power Authority ("NYPA") in 2000 through a competitive bid process. Entergy purchased Indian Point Unit 2 from Con Edison in 2001. In the last ten years, Entergy has invested more than one billion dollars in the Indian Point facility, including hundreds of millions of dollars to strengthen and enhance safety and security.

Indian Point is an essential component of the New York energy portfolio. According to the New York Independent System Operator ("NYISO"), Indian Point currently provides between 25% and 30% of the electricity needed to serve the New York City metropolitan area, which includes the Northeast transportation corridor, international financial firms based in New York City, as well as many other businesses of regional, national, and international importance. Due to its size and location, Indian Point plays a major role in maintaining the reliability of the regional electric grid by helping to ensure stable power flows across the transmission system. The NYISO issued a Comprehensive Reliability Plan on July 22, 2015 in which it confirmed that, if Indian Point were unavailable in 2016, there would be immediate reliability violations.

Indian Point has an excellent safety record and ranks among the most reliable in the nation. Our personnel receive more job-related training than most other industries. Even after undergoing extensive training prior to assuming their plant responsibilities, reactor operators receive one week of additional training for every six weeks they are on the job to ensure they maintain their operational capabilities. Indian Point has several layers of security including highly restricted access that is controlled by state-of-the-art security systems. The containment structures at our facilities were designed with multiple safety systems and components based on redundant protections. Moreover, the plants have multiple layers of backup safety systems and diverse features to address emergency conditions, including multiple emergency backup power generators capable of shutting down the plant in the event of a total

loss of all offsite power. These systems are monitored twenty-four hours a day, seven days a week by highly trained personnel. We handle spent nuclear fuel in ways that are safe, secure, environmentally responsible, and proven over decades of operating history. While awaiting a federal permanent central spent nuclear fuel facility, we can continue to store spent fuel safely for years to come through a combination of spent fuel pools and dry cask storage.

Like all other nuclear facilities in the U.S., Indian Point reports to the NRC a wide range of technical information that far exceeds the information other industrial facilities are required (or choose) to provide to anyone. The NRC reporting regime includes full-time resident inspectors who have unrestricted access to plant information as well as to any and all personnel. For 2014, Indian Point once again maintained all “green” NRC performance indicators and inspection findings following more than 5,000 hours of review by that independent agency, placing the station in the overall “green” category of NRC’s oversight program.

Emergency planning at Indian Point is both robust and effective. The facility has hurricane, tornado, seismic, and flooding protections. The professionals at Indian Point are licensed and they continually train to prevent or mitigate the effects of extreme weather events. In the unlikely event that Indian Point’s emergency response plan would need to be activated, it would provide appropriate protection for the public health and safety. That plan has been reviewed by the NRC and the Federal Emergency Management Agency; it is tested regularly, and it is consistent with the best information available with respect to weather modeling, traffic patterns, etc.

Numerous independent studies have confirmed the importance of Indian Point to the New York City region. For example, in August 2011, the New York City Department of Environmental Protection released an independent report by Charles River Associates (“the CRA Report”), which concluded that the reliability of New York City’s electrical system would be compromised if Indian Point retired, unless new generation and/or transmission facilities were constructed. And, according the CRA Report, Indian Point’s retirement would lead to a \$2 to \$3 billion increase in wholesale energy costs through 2030 for New York City consumers (and \$10 to \$12 billion state-wide). These increased wholesale energy costs would be in addition to the cost of building new generation and transmission infrastructure to address reliability concerns (at least \$2 billion, based on the most likely scenarios). Recently, New York City issued its comprehensive OneNYC Plan (April 22, 2015), in which it reiterated the City’s support for the continued operation of Indian Point.

New York State receives substantial economic benefits from Indian Point’s continued operations. A recent study completed by the Nuclear Energy Institute demonstrates that Indian Point contributes approximately \$1.6 billion annually to New York’s economy and \$2.5 billion annually to the nation as a whole. The facility’s nearly 1,000 employees benefit from an annual payroll of approximately \$140 million, which stimulates nearly 4,400 additional jobs in other businesses in New York. Each year, Indian Point contributes more than \$1 million to non-profit organizations located within the lower Hudson Valley and the New York City metropolitan region.

Indian Point is also critical to New York’s environmental aspirations. According to the CRA Report, New York State would experience an increase of approximately 15% in CO₂ emissions under most conventional replacement scenarios, with roughly a 7% to 8% increase in NO_x emissions. Put simply, New York State’s existing greenhouse gas reduction goals cannot reasonably be met without Indian Point – a facility that prevents the release of 8.5 million metric tons of carbon dioxide annually, the equivalent of taking 1.6 million cars off the road.

In short, Indian Point provides a wide range of benefits to the New York City region, from an electric reliability perspective, from an economic perspective, and from an environmental perspective. But, those benefits will not continue unless Indian Point receives renewed licenses from the NRC to

operate for an additional twenty years. It is in the context of license renewal that we appreciate the opportunity to express our concerns about the misuse of the federal CZMA by the State of New York.

LICENSE RENEWAL AND CZMA

Indian Point's license renewal application has been pending at the NRC since 2007. The license renewal effort includes (1) a proceeding at the NRC, (2) state and federal filings related to CZMA, and (3) a request for a Clean Water Act Section 401 Water Quality Certificate ("WQC") from the New York State Department of Environmental Conservation.²

The NRC proceeding has been focused on the resolution (through settlement or trial) of the various contentions that parties have raised with respect to Indian Point's license renewal. Nine contentions were tried before the NRC Atomic Safety and Licensing Board ("ASLB"). Eight of those issues (together with a related issue) have been resolved in Entergy's favor and one remains pending on appeal. There are three pending contentions that will be tried in late 2015. In a series of formal filings submitted into the record, NRC Staff has concluded that Indian Point meets all of the NRC's safety and environmental requirements to receive a renewed license. NRC Staff has also advised that it will issue an update to the Final Supplemental Environmental Impact Statement ("FSEIS") in 2016 addressing, among other issues, Indian Point's impact on the Hudson River. Given the pending issues and based on past NRC proceedings, a final decision in the Indian Point license renewal proceeding is not expected for several more years.³

As one of three paths⁴ to demonstrate its satisfaction of any applicable CZMA consistency requirements related to license renewal, Indian Point initially submitted on December 17, 2012, a

² The WQC confirms that there is "reasonable assurance" that Indian Point will operate in compliance with NYS water quality regulations. In license renewal proceedings for the Ginna and Nine Mile Point nuclear plants, NYSDEC issued a WQC based on each facility's ongoing obligation to hold and comply with a State Pollutant Discharge Elimination System ("SPDES") permit. For the James A. FitzPatrick plant (also owned by Entergy), NYSDEC refused to draw an express logical link, but effectively based issuance of a WQC on a SPDES permit issued under a stipulation requiring Entergy to install Ristroph screens and to further study the best technology available, or BTA. Indian Point filed its request for a WQC in April 2009 referencing its current SPDES permit and pending request for renewal of that permit. NYSDEC, however, refused to use the same process for Indian Point and, instead, raised issues relating to thermal discharge, best usage of the Hudson River, and other concerns. In April 2010, NYSDEC Staff recommended a denial of the WQC unless Indian Point agreed, among other actions, to construct cooling towers as part of a closed cycle cooling system. Indian Point has contested the NYSDEC Staff recommendation and the matter is currently in the administrative hearing process, with no final NYSDEC decision expected before late 2016, at the earliest. Moreover, Indian Point advised NRC that NYSDEC waived its right to deny the WQC application because no final NYSDEC decision was issued within one year (by April 2010) as required by Section 401 of the Clean Water Act.

³ As part of the license renewal proceeding, the NRC's Atomic Safety Licensing Board solicited public comments regarding the license renewal application. Comments were due by September 15, 2012. A wide range of more than two hundred business and labor groups from New York submitted comments in support of Indian Point's license renewal application, including the Business Council of New York State, the Partnership for New York City, the New York Urban League, the New York Energy Consumers Council, the NAACP New York State Conference, the Westchester County Association, the New York State AFL-CIO, and the Building and Construction Trades Council of New York, among others.

⁴ Indian Point also filed (1) a request for a New York state court determination that the facility is grandfathered under New York State's Coastal Management Program and does not need further CZMA review; and (2) a

consistency certification with the NRC and the New York State Department of State (“NYSDOS”) confirming that Indian Point’s continued operation is consistent with NYS coastal management policies (in general, NYSDOS or another appropriate state agency may have the right to concur with or object to such a filing). On November 5, 2014, Indian Point withdrew its pending consistency certification with the expressed intention to refile with NRC and NYSDOS after NRC Staff issues an updated Final Supplemental Environmental Impact Statement in 2016.⁵ Nevertheless, Indian Point currently operates in a manner that is fully protective of the Hudson River and in compliance with state and federal law.

In most license renewal proceedings – and in the case of the prior license renewal proceedings in New York related to other nuclear facilities – the CZMA consistency certification is not controversial.⁶ But, in the case of Indian Point, New York is misusing CZMA by (1) applying the standards for consistency certification in a manner that is inconsistent with prior license renewal proceedings and (2) raising issues of nuclear safety (which are within the sole purview of the NRC) as grounds for potential objection to Indian Point’s consistency certification.

New York State is using its CZMA authority in an inconsistent and discriminatory manner. In correspondence with the NRC concerning Indian Point’s license renewal application, NYSDOS has asserted that federal consistency requires full consistency with all of the forty-four Coastal Management Program (“CMP”) policies.⁷ This assertion stands in stark contrast to the consistency determinations NYSDOS made in connection with the license renewals for three other nuclear generating facilities operating in New York. Indeed, the CZMA consistency certifications submitted for the Nine Mile Point and James A. FitzPatrick facilities expressly acknowledged that the continued operation of those plants under renewed licenses would not be consistent with several CMP policies. And like the owners of the

request for a determination from the NRC that Indian Point’s compliance with New York State coastal management policies was previously reviewed by appropriate New York State agencies when Entergy purchased the units in 2000 and 2001 from NYPA and ConEd, respectively, and need not be reviewed again in connection with license renewal. On December 11, 2014, the New York State Supreme Court Appellate Division ruled in the “grandfathering appeal” that Entergy is exempt from the New York Coastal Management Program (and therefore no consistency certification is required). That decision is under review by the New York Court of Appeals, New York’s highest court; briefing has been scheduled through January 2016. The “previous review” filing remains pending at the NRC, with no specific schedule for disposition.

⁵ NYSDOS Staff expressed its view that Indian Point was not entitled to withdraw the consistency certification and NYSDOS Staff further expressed concern about whether it was required to render a decision on the consistency certification by December 31, 2014 (the applicable deadline for NYSDOS action prior to the withdrawal) to avoid a claim that NYSDOS waived its ability to issue a decision. Entergy and NYSDOS have signed an agreement under which NYSDOS agreed that it will take no action on Entergy’s consistency certification until at least September 28, 2015, while NYSDOS pursues an appeal of the December 11, 2014 NYS Appellate Division decision.

⁶ For example, one of Entergy’s Louisiana utility company subsidiaries submitted a CZMA consistency certification to the Louisiana Department of Natural Resources (“LDNR”) on April 9, 2015, in connection with a license renewal application for the Waterford 3 nuclear plant. On May 14, 2015, LDNR determined that the renewal of the Waterford 3’s operating license would be consistent with Louisiana’s coastal resource program. There were no issues that arose after submittal of the CZMA certification and no additional data was requested by the agency.

⁷ NYSDOS Responses to NRC’s Six Inquiries 16-17 (citing 19 NYCRR § 600.4(b) with respect to state consistency) (May 30, 2014).

R.E. Ginna facility, they made no claim or showing that renewal would be consistent with another thirty-two to thirty-five of the forty-four policies, concluding instead that those policies were inapplicable in the circumstances. In other words, Nine Mile Point, James A. FitzPatrick, and R.E. Ginna certified that license renewal would be consistent with less than 30% of the CMP's forty-four coastal policies, and two of the three expressly certified that it would be inconsistent with one or more policies.

NYSDOS nonetheless concurred with all three certifications, without even mentioning their failure to show consistency with all CMP policies due to their inapplicability. In short, NYSDOS's assertion that federal consistency requires a proposed activity to be consistent with every CMP policy, regardless of its inapplicability, appears to be a new standard that only Indian Point will be required to meet. If NYSDOS remains committed to that approach, it will cut against years of precedent and will violate the federal prohibition against "applying [coastal] policies differently, or in a discriminatory way, among various entities for the same type of project for similar purposes."⁸

Moreover, New York State appears to be trying to use its CZMA authority to block NRC license renewal based on considerations that lie outside the scope of CZMA. After Entergy had provided on the public record several thousand pages documenting Indian Point's consistency with the New York CMP, NYSDOS had no questions for our team about that material. Instead, NYSDOS asked Entergy to answer new and unprecedented questions about risks and mitigation measures at Indian Point related to flooding, seismic events, and on-site dry cask storage of spent nuclear fuel – all matters of radiological health and safety regulated exclusively by the NRC. As this Committee is well aware, Congress has granted the NRC broad authority to ensure the safety of commercial nuclear power generation. New York State cannot rightly consider such issues in the course of reviewing Indian Point under the CZMA.

Thank you for the opportunity to express our concerns. I am available to answer any questions the Committee may have.

⁸ 65 Fed. Reg. at 77,128 (elaborating on 15 C.F.R. § 930.6(a)).